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THE PARLIAMENTARY STANDING COMMITTEE ON PUBLIC ACCOUNTS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON THURSDAY, 9 APRIL 2020

INQUIRY INTO THE OFFICE OF THE OMBUDSMAN AND HEALTH COMPLAINTS COMMISSIONER

Mr RICHARD CONNOCK, OMBUDSMAN TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED VIA TELECONFERENCE.

CHAIR (Mr Dean) - Welcome, Richard. We have Ruth, John and Josh online, and David O'Byrne, the committee secretary and I are in Hobart. This hearing is being recorded by Hansard. You understand the situation and the system - you've given evidence to us before, so no need to go through any of that. We've indicated by way of email to you the number of points that we want to now raise -

Mr CONNOCK - I have been given a copy of your letter to the minister.

CHAIR - Okay. We're working through the report that we started some time ago, that you would be aware of, and amongst finalising our report there are some issues that came up that we needed some further information from you, which related to the position in relation to OPCUT and the Custodial Inspectorate and the Official Visitors Program. An update on where all of those matters are at and as to where your office currently is with its workload and changes that will need to be made, or have been made, for you to be able to do the work you are required to do. Can I leave it open to you for you to discuss those issues, or raise those issues, with us?

Mr CONNOCK - Sure. Happy to. I'll start with Custodial Inspectorate. Of course, everything is in a state of flux at present. We did have inspections planned for early March but, given the prevailing circumstances, we cancelled that. Also, official visitors are staying away from the prison at the moment too, in terms of transmission and that sort of stuff.

I could be pretty brief. I will probably be repeating myself in terms of the evidence I gave last time. I am referring to our budget submission from earlier this year and I acknowledge too that all of this is a changing environment at the moment in terms of funding and so forth.

In terms of the Custodial Inspectorate, as I think I mentioned when I gave evidence back in July, we are underfunded. The amount that we previously got is, I think, \$266 000. In discussion with the former attorney-general, Dr Goodwin, that was to be the start-up money, as it were, to establish the inspectorate and get it going, and then the budget was to be reviewed. It hasn't been and we still only have that. So we have one band 7, who has just been reclassified to band 8, principal officer and one band 5, three days a week, and a sixth of me. We are having to do the entire inspection. We manage to get around all the facilities in the three years required by the act as of November last year, but only just, and we still have outstanding reports that we haven't been able to prepare. This hiatus is going to be good for that because we can do other things while we are not inspecting, so hopefully that will bring us a bit up to date there.

In the budget bid we have asked that we retain obviously the two that we've got, that we'd like to increase the band 5 to 0.8 FTE, so four days a week rather than three, and another band 6 inspection officer. That would allow us to get around all the prisons and to fulfil our functions. One of the problems we have at the moment with only two is that there is no-one left.

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Let me backstep - we have to go in pairs for security reasons when we inspect, so we need two people in there. If we've only got two on the floor as it were, they have to do all the inspections themselves - I go to part of the process and all the rest -which means they build up hours, they can't take leave during inspection times. It all becomes very difficult to manage on a human resources basis, so a third officer would free them up to do other things and to relieve each other.

The other thing we've asked for, which is not in the budget, is transport. We don't have any budget for travelling up to the north of the state, so we asked for funding to cover vehicle costs as well as IT equipment and access, and an increase in consultancy fees because we are dependent on consultants. Some of these inspections are very technical and specialised, such as the health one, which we are supposed to be doing around this time. That requires an assessment of physical and mental health and environmental health. We are not experts in any of those things so we need to bring the consultants in. The experience over the last three years has shown that the budget is just not sufficient to engage the consultants that we need.

CHAIR - If members have questions as Richard is going through, please jump in with any questions. Richard, you are saying to us that you do not and cannot carry out the functions required of this office with your current budget resources.

Mr CONNOCK - In a nutshell, yes.

CHAIR - Very clear. That can't change with the changes that will occur within your office with the additional two coming in to the RTI area? That doesn't change it?

Mr CONNOCK - No, it doesn't change it. We are effectively not siloed but all the major jurisdictions operate separately and the work requires different skill sets. So health is slightly different to ombudsman; ombudsman is different to right to information; and custodial is different from all the rest of them. So they are different skill sets and different ways of operating. There is not a lot of crossover. As you know, Chair, there's the problem we've historically had in RTI that we are now trying to address - not doing as well as I had hoped, but we are trying to address - and I can't afford to move people out of that either, because that would then create another dysfunctional jurisdiction.

CHAIR - That was going to be another question. You've answered that - you haven't got that capacity or ability to move people around within your areas.

Mr CONNOCK - No, each jurisdiction is doing what it can with less than it needs.

CHAIR - Right. Any other members have questions on this point. No? Please continue, Richard, if you don't mind.

Mr CONNOCK - Not at all. Would you like to hear more about the inspectorate?

CHAIR - Is there any more there in the inspectorate that we need to know?

Mr CONNOCK - I don't think so; it really is an assortment of things. My staff are extremely good and extremely dedicated, and I'm grateful for that. They are very worried that they can't do their jobs with the current resourcing, but they are doing their very best. If you are happy for me to move on, I can move on to OPTCUT, the United Nations Optional Protocol Against Torture and Other Cruel and Unusual Treatment.

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CHAIR - Before you move on to that, I'm taking from what you have said that you've made the approaches to the Government for the extra resources and finances that are needed for you to be able to carry out the functions required of you in this area - that is, in the area of the Custodial Inspectorate and so on?

Mr CONNOCK - We have; we did a very detailed budget submission back in January. All this has been forward to Treasury and Government.

CHAIR - And you have had nothing back from that at this time?

Mr CONNOCK - Not at this stage, no; in the current circumstances, I don't really expect to hear anything for a while.

CHAIR - That's fair enough, too.

Ms FORREST - I guess if an outbreak of COVID-19 happened in the prison, there could be a real need to be undertaking inspections?

Mr CONNOCK - Well, there might be, yes, although -

Ms FORREST - What's the plan around that?

Mr CONNOCK - The prison is working on a plan at the moment; they've stopped visits. The problem with the main prison complex is that it is so overcrowded that, if there were an outbreak, there is nowhere where you could isolate people. If we physically went in, we would be exposing ourselves and prisoners and staff to possible problems. We are continuing to monitor. We have full access to all of Tasmania Prison Service's databases and information systems, and the Prison Directorate is very cooperative with us. We are monitoring from a distance; we are not sitting back doing nothing. We can keep an eye on things remotely, which is what we are doing.

In fact, we are following up issues as we spot them now. There have been a few things - this is a new situation for everybody - and we have raised them as we have found them. So we are continuing to do a bit; we are just not physically in the prison, which is probably safest for prisoners and us.

Ms FORREST - I don't disagree with that; I am just wondering whether there's a role or a case for you in your role in this area to recommend release into home detention or some other measures for some of the low-risk prisoners, to reduce that risk with the severe overcrowding we have in the prison.

Mr CONNOCK - We might have views about that but we are an independent inspector - it is not our role to dictate policy. One would like to think that serious consideration would be given to these alternatives, but it's not for us to direct the prison as to what it should do or the Government -

Ms FORREST - You can't make a recommendation along those lines as the Inspector?

Mr CONNOCK - I am not sure that I can because it doesn't arise from an inspection, and it doesn't go to any inspection standard, and the legislation confines that to the inspections of prisons. There are various interest groups and so forth that are calling for this sort of thing and it is happening in other jurisdictions. I am sure it is something that will be given consideration down here, but it's

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not our role. Personally I'd be happy too, but I don't think it's our role to do that. We've got a limited mandate under the act.

Ms FORREST - That was my question: do you have a role in that at all, or not?

Mr CONNOCK - No, I don't think the act would allow us to do that. We can only report on inspections.

CHAIR - I may have missed your answer to this question when we last spoke to you. I think you mentioned that the first round of custodial inspections was to be completed by 31 December 2020 and you advised at that stage that this couldn't occur due to the funding issues. Did it occur?

Mr CONNOCK - It was actually December last year and, yes, we just sneaked in. We completed the inspection in November 2019 -

Ms FORREST - We may need to mute. There's a lot of background noise. We may need to mute, sorry.

Mr CONNOCK - Okay. We completed the actual physical inspections on time, but we still have a number of outstanding reports going back to October 2018 inspections. That's not satisfactory from anybody's point of view. We need to be reporting these things quickly. We understand there's a level of frustration with the Prison Service and the department in that, by the time these reports come out, often things have changed - sometimes for the better.

We give the department, obviously, the opportunity to comment on the reports but we should be putting them out in a far more timely manner. Only having one-and-a-half people, their time is taken up - and a lot of work goes into planning these inspections too, I might add; there's a lot of backgrounding done both with Justice and with Communities, which are actually in charge of Ashley Youth Detention Centre. So there's a lot of work building up to an inspection and a lot of work involved in actually conducting it, and then a lot of work in writing it up. There's these three stages and one-and-a-half people doing them.

I'm pleased to say we did meet our statutory requirements but as this goes along, I can see us becoming bogged down because we have these outstanding reports and then we're commencing new inspections, which will have to be reported on too. So it's just going to get, you know, self-fulfilling, basically.

CHAIR - When you are not able to do this work and these issues arise for you, do you report to the A-G?

Mr CONNOCK - Yes, I have regular meetings with the minister and let her know what is going on.

CHAIR - Right, that's a requirement. We will now go on to OPCAT.

Mr CONNOCK - Yes. That's another thing - in your letter to the minister [inaudible], yes, I have no idea what's happened with that, and I don't think any other state does either. There was to be a visit from the UN committee but that was obviously cancelled due to the COVID-19 pandemic; they were going to visit here and Nauru. The present situation, as I understand it, is that the Commonwealth has to proceed with it now because they ratified it. I understand there might have

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been a 12-month extension for compliance; it was supposed to be January next year. I think it's been pushed out but don't hold me to that - I'm a bit rusty on that.

Anyway, we don't know what's happening and the Commonwealth has basically appointed the Commonwealth Ombudsman as the national preventative mechanism. Every state is also required to appoint their own NPM. The situation down here is that the preferred entity for that is the Custodial Inspector, but nobody seems to be too sure exactly what's involved. I have been having discussions with Justice, DPAC and various other people. From my point of view, there is a need for new legislation. A lot of people don't agree with me; they just think that the Custodial Inspectorate Act can be tweaked, but the inspectorate function is quite different to OPCAT, which are preventative inspections, not looking against standards and so forth. [Inaudible] trained in that.

The other thing is that they are talking about resourcing it and they are saying - and I'm not quite sure where this comes from - 'four FTE'. The problem is that I haven't in a bid because I can't quantify what might be needed to meet the OPCAT requirements because the UN guidelines are fairly strict as to the composition of an NPM inspection team. You can't just put in for four inspection officers and go. The guidelines require particular fields of expertise, including legal, medical, psychological, child-related and gender expertise. So it's not just any sort of person who can walk into this job.

The other thing is that if it is attached to an existing entity, like the Custodial Inspectorate, it still has to be completely independent and separate from the other officers of that entity. If we got four more, say, they would not only have to meet the guidelines in terms of expertise, they would also have to stand alone from other staff. They would have to be a completely independent unit, which makes it very hard to work out costs. I don't know where we would physically house them. It's all sort of still up in the air, which makes it very difficult to plan.

CHAIR - If there are no questions in this area, we will move forward. Thank you, Richard, for that update.

Mr CONNOCK - I'm sorry it's not much of an update.

CHAIR - You've covered it and that was the area that we raised at our meeting - we wanted some more information and detail on it.

Mr CONNOCK - I understand; we're basically in the same position as every other state. There is an intergovernmental agreement but, as I understand it, no state has signed up to it because the funding is unclear. Everybody bought into Commonwealth and the Commonwealth is basically saying, 'Well, you have to do it.' You can understand the reluctance.

CHAIR - Yes. Thanks for that, Richard. We'll go to a couple of other points. The Launceston office - that's still closed, isn't it?

Mr CONNOCK - Yes.

CHAIR - There's no intention of opening that again; you don't have the resources?

Mr CONNOCK - I'd like to but without the resources we can't do it. That was the global financial crisis, and that took out the salary of a senior investigation officer and the rent on the

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Launceston premises. That was permanently deleted from the budget, so, no, we won't be reopening it.

CHAIR - We raised a point relating to the energy area. Funding here is contributed by the entities in accordance with the number of complaints made about the service delivery of each responsible entity.

Mr CONNOCK - That's right.

CHAIR - Is this funding model still working, still in place?

Mr CONNOCK - It's still working, and it does work well. We occasionally get a little bit of kickback about, you know, how much it costs per complaint. But then, I think the networks had a look at the Victorian model and that's how much they were paying up there, and decided it was pretty good down here. It does work well - that relationship with the providers, with the entities - it works well.

CHAIR - Thank you for that. The other one was the RTI area: with the additional staff - I do not know whether you have the second one in place at this time - do you see that obviously helping you streamline the processes in that area and to get the reports out at an earlier time?

Mr CONNOCK - Yes. It's not going as fast as I would've liked, but there have been improvements. We've already this year put out more than twice as many reports, I think, as we put out in the whole of last year. We are bringing the average down, but the bulk cases [inaudible] are still worryingly high in some cases, but we are targeting those. We have recruited the third band 4 position; we had thought our existing band 6 officer, who's the backbone of the jurisdiction, was moving on - he had prior calling [inaudible] position in a higher role [inaudible], and congratulations to him, but that position has now been withdrawn. So he is back with us, so we do have a team at the present time.

CHAIR - What is that team, Richard? What are the numbers?

Mr CONNOCK - We have a full-time band 8 principal officer; we have a full-time band 6 senior inspection and review officer; and we recruited, about a month ago, a band 4 investigation and review officer. We finally have the full complement; it's taken longer than I would have liked for this all to come together but now it has, and, yes, we are starting to look at handling files in different ways - not running everything to review, which has been a problem with only having one person.

As you know, Chair, we have a lot of different powers under the act - we can case conference and we can hold pseudo-directions hearings and that sort of thing. I'd like to be doing a lot more of that sort of stuff so that we avoid these formal extended review processes. I'm reasonably confident that a fairly significant proportion of applications could be devolved to that level. There will always be the ones that have to go to formal review, but I would like to be limiting it to those ones that have to go to review, not all of them.

CHAIR - We raised some issues on the national code of conduct for unregistered healthcare workers. Have your resourcing issues in this respect been resolved; if not, what steps are you taking to address that? What is happening in that area?

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Mr CONNOCK - Again, we have put in a detailed budget submission for the Health Complaints Commissioner around this. As I mentioned to the committee last time I appeared, this is very different to the sort of work we do in Health complaints at the present time. It is almost akin to a prosecution rather than an investigation. We would have the power to prohibit practice by an unregistered practitioner and they would then have the right to review that in a court. We effectively have to be court-ready, which is not the sort of work we are doing now. You need a fairly specialist team. I have actually some discussions with the Office of the Solicitor-General, and we agreed that it should be their office that actually does the court work. There is a lot of crossover here.

The other thing is that I speak a lot to my counterparts in other jurisdictions that have powers, particularly New South Wales and South Australia - while their numbers are fairly low, the work is very intensive because you need to move swiftly, and you need to be pretty sure of what you're doing. You are affecting livelihoods and things as well as protecting public health. It is a fairly important function. My concern is that, unless it is properly resourced, you will be putting people at risk. I am not prepared to take responsibility for that unless there is commitment and resourcing because it is a question of public health. We would get fairly significant powers. The act has been amended but it hasn't been proclaimed yet. Several other states haven't done anything - for example, Western Australia hasn't even drafted legislation. I am not sure where NT is. This is supposed to be a national code, so again it's a bit like OPCAT - you don't know exactly what's happening with it.

CHAIR - Yes. Richard, that covers the areas of our concern. Is there anything else you would like to leave us with at this stage?

Mr CONNOCK - No, I don't think so. You had a very detailed submission from me; I spoke to you at length back in July and this is really just recapping and bringing you up to date on some of those things, which unfortunately in some cases haven't really changed.

CHAIR - Richard, thank you for that. Our position is that we would like to finalise this report within the next few weeks, but that will depend on what is happening with COVID-19 as well, and the pressure on members.

Mr CONNOCK - I absolutely understand.

CHAIR - Members are certainly inundated with work at present; I am and all members are, so it's a really difficult time.

Mr CONNOCK - Yes, we know what it's like. One of the things that we're trying to do here is not put extra pressure on agencies and government; we have a role to play, but we don't have to exacerbate the problems.

CHAIR - Sure. Having said that, Richard, we thank you very much for coming online to talk to us today about this. Sorry for that inconvenience -

Mr CONNOCK - That's fine; thank you for the opportunity.

CHAIR - Thank you, Richard.

THE WITNESS WITHDREW.